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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapter I

**[Docket Nos. FWS-HQ-ES-2015-0126 and FWS-HQ-ES-2015-0165;
FXES11140900000-178-FF09E33000]**

Mitigation Policies of the U.S. Fish and Wildlife Service; Request for Comments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Policy review; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are requesting public comment on portions of our existing Mitigation Policy and Endangered Species Act Compensatory Mitigation Policy (ESA-CMP). We specifically request comment on the policies' mitigation planning goals. Based on comments received, the Service will decide whether and how to revise the policies.

DATES: We will accept comments from all interested parties until **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES: *Document availability:* The Service's Mitigation Policy was published

November 21, 2016, at 81 FR 83440 and is available at <https://www.regulations.gov> at Docket No. FWS–HQ–ES–2015–0126. The Service’s ESA–CMP was published December 27, 2016, at 81 FR 95316 and is available at <https://www.regulations.gov> at Docket No. FWS–HQ–ES–2015–0165.

Comment submission: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the Search box, enter the docket number for the policy, which is FWS–HQ–ES–2015–0126 for the mitigation policy and FWS–HQ–ES–2015–0165 for the ESA–CMP. You may enter a comment by clicking on the “Comment Now!” button. Please ensure that you have found the correct document before submitting your comment.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. [FWS–HQ–ES–2015–0126 or FWS–HQ–ES–2015–0165]; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Request for Information** below for more information).

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, U.S. Fish and Wildlife Service, Division of Environmental Review, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703–358–2442.

SUPPLEMENTARY INFORMATION:

Background

The Mitigation Policy (81 FR 83440, November 21, 2016) and the ESA–CMP (81 FR 95316, December 27, 2016) were developed to ensure consistency with existing directives in effect at the time of issuance, including former President Obama’s Memorandum on Mitigating Impacts on Natural Resources From Development and Encouraging Related Private Investment (November 3, 2015). The Presidential Memorandum directed all Federal agencies that manage natural resources to avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources (natural resources) caused by land- or water-disturbing activities, and to ensure that any remaining harmful effects are effectively addressed, consistent with existing mission and legal authorities. Also, under the memorandum, all Federal mitigation policies were directed to clearly set a net-benefit goal or, at minimum, a no-net-loss goal for natural resources, wherever doing so is allowed by existing statutory authority and is consistent with agency mission and established natural resource objectives. The Presidential Memorandum was subsequently rescinded by Executive Order 13783, “Promoting Energy Independence and Economic Growth” (March 28, 2017).

The 2016 policies also described their consistency with the Secretary of the Interior’s Order 3330 on Improving Mitigation Policies and Practices of the Department of the Interior (October 31, 2013), which established a Department-wide mitigation strategy to ensure consistency and efficiency in the review and permitting of infrastructure-development projects and in conserving natural and cultural resources. The Secretary’s Order was subsequently revoked by Secretary of the Interior’s Order 3349 on American Energy Independence (March 29, 2017). It directed Department of

the Interior bureaus to reexamine mitigation policies and practices to better balance conservation strategies and policies with job creation for American families.

Mitigation Planning Goal

The Mitigation Policy articulated general policy and principles intended to guide Service-recommended mitigation across Service programs. These principles were in turn adopted by the ESA–CMP. Included among the principles was an overall mitigation planning goal of net conservation gain:

“The Service’s mitigation planning goal is to improve (i.e., a net gain) or, at minimum, to maintain (i.e., no net loss) the current status of affected resources, as allowed by applicable statutory authority and consistent with the responsibilities of action proponents under such authority. As informed by established conservation objectives and strategies, Service mitigation recommendations will focus primarily on important, scarce, or sensitive resources, and will specify the means and measures that achieve the planning goal.”

When the Service published both the draft Mitigation Policy and draft ESA–CMP for public comment, many commenters addressed the policies’ mitigation planning goals. Comments on the proposed Mitigation Policy may be viewed here:

<https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=FWS-HQ-ES-2015-0126&refD=FWS-HQ-ES-2015-0126-0001>. Comments on the proposed ESA-CMP may be viewed here:

<https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=FWS-HQ-ES-2015-0165&refD=FWS-HQ-ES-2015-0165-0001>. The Service addressed these comments within the documents for the final policies.

This document announces the Service's intent to solicit additional input regarding whether to retain or remove net conservation gain as a mitigation planning goal within our mitigation policies.

Request for Information

We ask that comments specifically address the advisability of retaining or removing references to net conservation gain from the Service's overall mitigation planning goal within each policy. We further ask that commenters submit comments to one or the other docket based on the specific policy of concern (the Mitigation Policy or the ESA–CMP).

We will consider information and recommendations from all interested parties. We therefore invite comments, information, and recommendations from governmental agencies, Indian Tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties. All comments and materials received by the date listed above in **DATES** will be considered prior to any proposed modification to the policies.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Next Steps

After the comment period closes, we will determine whether and how to revise

the policies in response to the public input regarding the requested information. We will also update the policies to remove specific references to the Presidential Memorandum that was rescinded by Executive Order 13783 and to Secretary of the Interior's Order 3330 that was revoked by the subsequent Order 3349.

Dated: October 4, 2017.

Gregory Sheehan,

Principal Deputy Director, U.S. Fish and Wildlife Service.

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